

SERVED: August 5, 1993

NTSB Order No. EA-3953

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 3rd day of August, 1993

_____)	
JOSEPH M. DEL BALZO,)	
Acting Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	Dockets SE-9830
v.)	SE-10053
)	
CRAIG FROST,)	
)	
Respondent.)	
_____)	

ORDER DENYING RECONSIDERATION

In our prior order, Administrator v. Frost, NTSB Order EA-3856, served April 22, 1993, we denied respondent's appeal from an initial decision by an administrative law judge. The law judge had affirmed an order of the Administrator revoking all of respondent's airman certificates. The order was premised on three instances of low helicopter flight by respondent. We deny respondent's Motion for Reconsideration of our order.¹

¹The Motion for Reconsideration was timely filed, received on May 7, 1993, and the Administrator replied in opposition. Respondent then, apparently, engaged new counsel, who filed a Motion to Amend and Augment his Motion for Reconsideration, dated May 26, 1993. The motion contains a number of new arguments and extensive elaboration of other arguments earlier raised.

For a number of reasons, we grant the Administrator's request to deny respondent's second filing and we decline to

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Respondent offers nothing that was not fully analyzed in our prior decision. Respondent suggests that the eyewitnesses on whom the law judge relied were not trustworthy, due to respondent's belief that an FAA witness coached them. While we have noted our concern, we repeat our earlier analysis (see Frost at 5): there is no indication or reason to believe that any discussion compromised the result. And, we explicitly reject respondent's suggestion that he properly waited until his appeal of the initial decision was due before bringing alleged improprieties at the hearing to our attention.

All of respondent's attacks are indirect attempts to undermine the law judge's credibility analysis. Reversal of that analysis is an extraordinary event. See, e.g., Administrator v. Smith, 5 NTSB 1560, 1563 (1987). Respondent's various procedural attacks -- serious as they are -- are not, in our view, sufficient to warrant a conclusion that we should reject the disinterested testimony of expert pilot eyewitnesses to respondent's flights in favor of respondent's testimony, especially when respondent's credibility itself is open to serious question. See Frost at 3. Contrary to respondent's contention, we cannot find that respondent has been denied due process and, therefore, should receive a new hearing.

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's Motion to Amend and Augment his Motion for Reconsideration will not be considered;

2. Respondent's Motion for Reconsideration is denied; and

(..continued)

consider that pleading. First, the second motion raises issues not properly before us on reconsideration. Administrator v. Hamilton, NTSB Order EA-3583 (1992). Second, our rules do not authorize motions such as this, and no permission to file this motion -- either by the May 22, 1993 due date or after -- was sought or granted. Our rule governing extensions of time, 49 C.F.R. 821.11, provides that extensions of time to file petitions for reconsideration will be granted only in extraordinary circumstances. Counsel should be aware of these requirements, yet has failed to offer any reason the Board should ignore the above defects in order to reach the merits of his motion to amend. We will limit our review to respondent's first filing.

3. The revocation of respondent's airman certificates shall begin 30 days from the date of service of this order.²

VOGT, Chairman, COUGHLIN, Vice Chairman, LAUBER, HART and HAMMERSCHMIDT, Members of the Board, concurred in the above order.

²For the purposes of this order, respondent must physically surrender his certificates to an appropriate representative of the FAA pursuant to FAR § 61.19(f).